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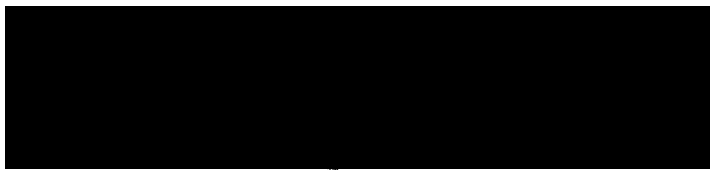
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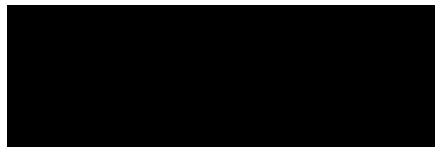


FILE: WAC 03 220 51853 Office: CALIFORNIA SERVICE CENTER Date: AUG 09 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner conducts research on educational issues such as disparities in teacher compensation, and school-based substance abuse and violence prevention programs. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In an introductory statement submitted with the petition, counsel states:

One of [the petitioner's] projects, in collaboration with the Arizona Department of Education, dealt with teen pregnancy and prevention of HIV/AIDS and other sexually transmitted diseases for high-risk youth in urban and rural areas. She also led another project, which investigated the effects of after-school programs on students' substance abuse and violence behavior. . . .

At the Arizona Prevention Research Center, she designed the projects and continuously monitored student progress through behavior and attitude measurement. . . . Clearly educating these youths is of national interest. Her work made substantial contributions to providing alternate education and prevention programs to students outside the regular school system. . . .

By estimating risk and protective factors related to alcohol, drugs and tobacco and examining the contexts of neighborhoods and schools, [the petitioner's] goal is to bring an international perspective to help to decrease the occurrence of high risk behaviors among youths.

In her native Turkey, the petitioner has studied issues such as gender-based salary disparities among school teachers.

The petitioner submits copies of reports and materials that the petitioner prepared while working as a postdoctoral researcher at Arizona State University. The record does not indicate how widely these materials have been disseminated or implemented.

The petitioner submits several witness letters. Most of the witnesses are affiliated with Arizona State University, or with the University of Texas at Austin, where the petitioner earned her doctoral degree. The one witness not associated with either of these universities is Professor [REDACTED] of East Carolina University. Prof. [REDACTED] states: "Because I don't know [the petitioner], my comments are based solely on a review of her resume." This does not readily suggest that Prof. [REDACTED] was already familiar with the petitioner's efforts before being asked for this letter. Prof. [REDACTED] discusses several of the projects and

studies that the petitioner has undertaken, but does not explain how the petitioner's contributions stand out from those of other trained and competent professionals in the field.

Some Arizona State University professors claim not to know the petitioner either, and to have formulated their opinions of the petitioner based on the petitioner's resume and the statements of colleagues who know the petitioner. The witnesses describe the petitioner's projects in varying degrees of detail, but, like Prof. [REDACTED] there is no discernible indication as to why the petitioner qualifies for the special benefit of a national interest waiver. It cannot suffice simply to attest to the petitioner's aptitude in an important specialty.

The director requested evidence to establish the importance of the petitioner's work, beyond the general benefit inherent in the field of endeavor. The director specifically requested "letters . . . from **significant** organizations," to show that the benefit arising from the petitioner's work outweighs the national interest inherent in the labor certification process. In response, the petitioner has submitted letters from top officials of two national organizations. Dr. [REDACTED] executive director of the American Association of School Administrators, states:

[The petitioner] combines a rare combination of backgrounds. She is heavily grounded in research and statistical skills, but combines that with a deep understanding of gender and equity issues. This is an unusual and useful combination. . . .

The international perspective [the petitioner] brings adds to the academic qualities she has mastered. Many universities in the U.S. are, if you will pardon my judgment, myopic when it comes to broadening American students. In essence, they don't know what they don't know and therefore pass on a narrow perspective to students. Having access to someone who combines their extensive research with life experiences that match that would be most helpful.

Dr. [REDACTED] comments appear to be limited to the observations that the petitioner is well-versed in her subject matter, and that her background offers a broader perspective than that of most U.S. researchers. Dr. [REDACTED] executive director of the University Council for Educational Administration, offers more information:

I support [the petitioner's] request based on the contributions she has made in academia thus far and her potential future contributions. A thorough examination of [the petitioner's] materials reveals that she has demonstrated a high level of expertise in her scholarship and research work, and the service she has provided both within and outside the university is certainly impressive. . . . Data-based decision making must become an essential part of every educational leadership preparation program, and it is scholars like [the petitioner] who have the expertise to design and deliver courses and modules in this area. Given the number of position announcements requiring expertise in this area and comments from search committee members, I have developed the impression that skills in this area are not as plentiful enough [sic] to fill current demand. [The petitioner], thus, holds the potential to make a significant contribution to the field of educational leadership and administration. . . .

[The petitioner's] work has already impacted the field of education and holds the potential to contribute to an even greater degree to educational leadership programs and to the evolving knowledge base on the preparation and practice of educational leaders. Her work, within the

State of Arizona on prevention has had a substantive impact on policy and practice at the national, state and local levels.

Dr. [REDACTED] also praises the petitioner's "perspective as an international scholar." Dr. [REDACTED] does not specify how the petitioner is said to have "had a substantive impact on policy and practice at the national . . . level," except to state that the petitioner has published her findings and thereby made them widely available. The petitioner has provided no specific examples of national or widespread changes in education policy that can be attributed or traced back to the petitioner's findings. The general assertion (regardless of its source) that the petitioner has "had a substantive impact" cannot suffice to establish eligibility.

The director denied the petition, stating that the petitioner has established the intrinsic merit and national scope of her work, but that she has not shown that it would be adverse to the national interest to hold her to the job offer/labor certification requirement. On appeal, counsel states:

There are several areas where [the petitioner's] skills are urgently needed within the U.S.

1. The Departments of Educational Administration and Leadership/Policy within U.S. Universities are in need of *University Faculty*.
2. District Level schools are in need of *Practitioners of Educational Administration*, such as principals, assistant principals and administrators.
3. Private educational consulting companies are in need of *Educational Researchers*.

(Counsel's emphasis.) Counsel cites "a *national* shortage of school administrators," and quotes a survey indicating that "the shortage of school administrators is 'particularly severe'" in California. The appeal includes documents showing that many institutions are attempting to recruit qualified individuals in the petitioner's field.

A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *Matter of New York State Dept. of Transportation* at 215. Counsel is demonstrably aware of what the precedent decision has to say about shortages; in the introductory letter submitted with the initial filing, counsel had stated: "We have provided no evidence of a shortage in [the petitioner's] field of expertise." Now, on appeal, exactly such a shortage appears to be a cornerstone of the appeal. Counsel does not explain how this one petitioner will alleviate this shortage at a nationally significant level; she certainly would not do so simply by filling one faculty, administrator, or consulting position. The existence of such a shortage would appear to significantly improve the petitioner's chances of obtaining an approved labor certification. We note that the record as it now stands does not identify any potential United States employer that seeks the petitioner's services. (While the petitioner had worked in the United States in the past, she returned to her native Turkey prior to the filing date.)

Counsel states that the petitioner "is the ideal person for waiver of the labor certification in that she is an educational leader and researcher with proven ability to make substantial contributions. . . . Her skills are described by experts as unique, of practical as well as academic benefit to U.S. students and educators and as exceeding that of most others." We have already discussed the petitioner's previously submitted evidence, and need not repeat that discussion here, except to reiterate that the record is devoid of objective evidence to show specifically how the petitioner's work has had a greater influence on education and educational policy than the work of other qualified professionals in the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.